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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,539	12/12/2003	Bernard Charles Sekula	F6182(V)	2723

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EXAMINER

MAHAFKEY, KELLY J

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/08/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/735,539

Applicant(s)

SEKULA, BERNARD CHARLES

Examiner

Kelly Mahafkey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11, 14 and 15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 14 and 15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Amendments made 10/25/06 have been entered.

Claims 1-9, 11, 14, and 15 remain pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The 103 rejection of claims 1-10 over Lanner et al (US 6352732) in view of the combination of Wolf et al (US 6774111) and Chau et al (US 6517886) has been withdrawn as necessitated by applicant's amendments.

The 103 rejection of claims 11-15 over Hammond (US 2002/0187246) in view of Wolf et al (US 6774111) has been withdrawn as necessitated by applicant's amendments.

Claims 1, 2, 4, 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Topalian (US 3294552) as evidenced by MMSA (Michigan Maple Syrup Association, Information Facts and Figures).

Topalian teaches of a shelf stable honey comprising 1-30% honey and a honey extender. Topalian teaches that the honey extender may comprise

- Any edible, water-soluble sugar such as sucrose, dextrose, fructose, or maltose
- Mixtures of suitable sugars
- Mixtures of suitable sugars with partially hydrolyzed starch such as corn syrup with a dextrose equivalent of preferably 24-60.

In Example 1, Topalian also teaches that the extender can include 57% (i.e. about 65%) corn syrup. Topalian teaches that a preferable mixture of sugars includes 5-15% maple syrup, 5-40% corn syrup, and at least 40% cane syrup. The honey extender as taught by Topalian is free of viscosifiers and non-nutritional sweeteners. Refer specifically to column 1 lines 30-40 and Example 1.

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Specifically regarding the honey extender as comprising about 7% or about 7.5-18% of an oligosaccharide, as recited in claims 1, 2, and 11, Topalian teaches of a honey composition with 1-30% honey and 5-15% maple syrup and as evidenced by MMSA (Information Facts and Figures), maple syrup is comprised of 66.5% solids, of which 100% is oligosaccharides. The honey extender as taught by Topalian includes about 3-15% oligosaccharides as seen below.

- The honey composition as taught by Topalian contains 1-30% honey and thus 70-99% honey extender.
- Topalian teaches that the honey composition includes 5-15% maple syrup, thus Topalian teaches that the honey extender includes about 5-22% maple syrup ($(5/99)*100\% = \text{about } 5\%$ & $(15/70)*100\% = \text{about } 22\%$)
- As evidenced by MMSA maple syrup includes 66.5% total solids, thus the honey extender includes about 3-15% maple syrup solids ($5\%*0.665 = \text{about } 3\%$ & $22\%*0.665 = \text{about } 15\%$).
- As evidenced by MMSA maple syrup solids comprise 100% oligosaccharides, thus, the honey extender, as taught by Topalian includes about 3-15% oligosaccharides.

Claims 1, 3-9, 11, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Topalian (US 3294552) as evidenced by Wikipedia.com (Honey <http://en.wikipedia.org/wiki/Honey>).

Topalian teaches of a shelf stable honey comprising 1-30% honey and a honey extender. Topalian teaches that the honey extender may comprise

- Any edible, water-soluble sugar such as sucrose, dextrose, fructose, or maltose
- Mixtures of suitable sugars
- Mixtures of suitable sugars with partially hydrolyzed starch such as corn syrup with a dextrose equivalent of preferably 24-60.

In Example 1, Topalian also teaches that the extender can include 57% (i.e. about 65%) corn syrup. Topalian teaches that a preferable mixture of sugars includes 5-15% maple

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syrup, 5-40% corn syrup, and at least 40% cane syrup. The honey extender as taught by Topalian is free of viscosifiers and non-nutritional sweeteners. Refer specifically to column 1 lines 30-40 and Example 1.

Topalian, however, is silent to the honey extender as comprising 65% corn syrup as recited in claim 3, about 30-40% glucose and about 40-50% fructose as recited in claim 6, less than 3.5% maltose, including the range of 1.75-2.25%, as recited in claims 7 and 8, and about 20-25% water as recited in claim 9, and to the properties of the honey with the extender as recited in claims 14 and 15.

Regarding the honey extender as comprising 65% corn syrup as recited in claim 3, about 30-40% glucose and about 40-50% fructose as recited in claim 6, less than 3.5% maltose, including the range of 1.75-2.25%, as recited in claims 7 and 8, and about 20-25% water as recited in claim 9, Topalian teaches that a honey flavor is desirable. As evidenced by wikipedia.com honey is comprised of about 30% glucose, about 40% fructose, up to about 10% other sugars, including maltose, and about 20% water (Composition of honey, Pages 2-3). It would have been obvious to one of ordinary skill in the art at the time the invention was made for the extender composition to include a composition similar to that of traditional honey, including include about 30% glucose, about 40% fructose, up to about 10% maltose, and about 20% water. One would have been motivated to do so in order to maintain the desirable honey flavor in the composition as taught by Topalian. Specifically regarding 65% corn syrup, it would have been further obvious to one of ordinary skill in the art at the time the invention was made to vary the amount of corn syrup in the extender composition as taught by Topalian depending on the other ingredients included in the composition and the amount of desired sugars in the composition.

Regarding the properties of the honey with the extender as recited in claims 14 and 15, because the honey composition as taught by Topalian is similar to the instantly claimed honey composition, one of skill in the art would expect the honey composition as taught by Topalian to possess the similar characteristics as the instantly claimed honey composition. Applicant has described the product with parameters which cannot be measured by the office for prior art comparison, because the office is not equipped to

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manufacture prior art products and compare them for patentability purposes.

Furthermore, applicant is reminded that where the claimed and prior art products are substantially identical in composition, a prima facie case of either anticipation or obviousness has been established. In re Best, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, as a prima facie case of obviousness has been properly established, the burden is shifted to the applicant to show that the prior art product is different.

Response to Arguments

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection, as necessitated by applicant's amendments made October 25, 2006.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Kelly Mahafkey
Examiner
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